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Attorneys for Plaintiff
Yolanda Ramos

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Yolanda Ramos, an Arizona resident,

Plaintiff,

v.

Dental Specialty Associates, PLC, an
Arizona limited liability company; **Lior**
Berger, an Arizona resident, and **Brian**
Lilien, an Arizona resident,

Defendants.

Case No.

VERIFIED COMPLAINT

(Jury Trial Requested)

Plaintiff Yolanda Ramos, for her Verified Complaint against Defendants, hereby
alleges as follows:

NATURE OF THE CASE

1. Plaintiff brings this action against Defendants for their unlawful failure to
pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219
(hereinafter “**FLSA**”) and failure to make timely payment of wages under the Arizona
Wage Statute, A.R.S. §§ 23-351, 23-353, and 23-355 (“**Arizona Wage Statute**”).

2. This action is brought to recover unpaid overtime wage compensation,

1 liquidated damages and statutory penalties resulting from Defendants' violations of the
2 FLSA.

3 3. This action is also brought to recover unpaid wages, treble damages, and
4
5 statutory penalties resulting from Defendants' violations of the Arizona Wage Statute.

6 **JURISDICTION AND VENUE**

7 4. This Court has jurisdiction over the subject matter and the parties hereto
8
9 pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

10 5. Plaintiff's state law claim is sufficiently related to her federal claim that it
11 forms the same case or controversy. This Court therefore has supplemental jurisdiction
12 over Plaintiff's claim under the Arizona Wage Statute pursuant to 28 U.S.C. § 1367.

13 6. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because
14
15 all or a substantial part of the acts or omissions giving rise to the claims occurred in the
16 state of Arizona within this District. Plaintiff was employed by Defendants in this
17 District.

18 **PARTIES**

19
20 7. At all times relevant to the matters alleged herein, Plaintiff Yolanda Ramos
21 was a resident of Arizona.

22 8. Plaintiff was a full-time, non-exempt employee of Defendants from in or
23 around September of 2013 until on or about November 30, 2015.

24
25 9. At all relevant times, Plaintiff was an employee of the Defendants as
26 defined in 29 U.S.C. § 203(e)(1) and was a non-exempt employee under 29 C.R.F. §
27 213(a)(1).

28 10. Defendant Dental Specialty Associates, PLC, is an Arizona limited liability

1 company, authorized to conduct business in Arizona, and was Plaintiff's employer as
2 defined by 29 U.S.C. § 203(d) and A.R.S. § 23-350.

3
4 11. Defendant Lior Berger is an Arizona resident. He has directly caused
5 events to take place giving rise to this action. Lior Berger is an owner of Dental
6 Specialty Associates, PLC.

7
8 12. Defendant Brian Lilien is an Arizona resident. He has directly caused
9 events to take place giving rise to this action. Brian Lilien is an owner of Dental
10 Specialty Associates, PLC.

11 13. Under the FLSA, Defendants Lior Berger and Brian Lilien are employers.
12 The FLSA defines "employer" as any individual who acts directly or indirectly in the
13 interest of an employer in relation to an employee. Defendants Lior Berger and Brian
14 Lilien are the owners of Dental Specialty Associates, PLC. They determined the method
15 and rate of Plaintiff's payment of wages. As persons who acted in the interest of Dental
16 Specialty Associates, PLC in relation to the company's employees, Lior Berger and Brian
17 Lilien are subject to individual and personal liability under the FLSA.
18

19
20 14. Plaintiff is further informed, believes, and thereon alleges that each of the
21 Defendants herein gave consent to, ratified, and authorized the acts of all other
22 Defendants, as alleged herein.

23
24 15. Defendants, and each of them, are sued in both their individual and
25 corporate capacities.

26 16. Defendants are jointly and severally liable for the injuries and damages
27 sustained by Plaintiff.

28 17. At all relevant times, Defendants have been engaged in interstate commerce

1 and have been an enterprise whose gross annual volume of sales made or business done is
2 greater than \$500,000.

3 FACTUAL ALLEGATIONS

4
5 18. Defendant Dental Specialty Associates, PLC is a dental practice that
6 performs routine dental care and dental surgery for its patients.

7 19. On or around September 2013, Plaintiff began employment with
8 Defendants as a specialty dental assistant, often performing clerical work, manual labor,
9 and generic assistance to Defendants' management staff.

10 20. For example, Plaintiff's job duties included tasks such as: cleaning
11 Defendants' offices, washing/sterilizing Defendants' medical equipment, stocking
12 supplies, answering phones, and handing medical instruments to dentists during a clinical
13 procedure.

14 21. Plaintiff did not exercise discretion or independent judgment with respect to
15 matters of significance.

16 22. Plaintiff did not have authority to formulate, affect, interpret, or implement
17 Defendants' management policies or operating practices.

18 23. Plaintiff did not carry out major assignments in conducting the operations
19 of Defendants' business.

20 24. Plaintiff did not perform work that affects business operations to a
21 substantial degree.

22 25. Plaintiff did not have the authority or discretion to commit the Defendants
23 in matters of significant financial importance.

24 26. Plaintiff did not have authority to waive or otherwise deviate from
25
26
27
28

1 Defendants' established policies and procedures without prior approval.

2 27. Plaintiff did not provide consultation or expert advice to management.

3 28. Plaintiff was not involved in planning long-term or short-term business
4 objectives.

5
6 29. Plaintiff did not investigate and/or resolve matters of significance on behalf
7 of Defendants.

8 30. Plaintiff did not represent Defendants in handling complaints, arbitrating
9 disputes, or resolving grievances.

10 31. Plaintiff's primary duty was not the management of Defendants' office(s)
11 in which she was employed.

12 32. Plaintiff did not customarily and/or regularly direct work of two or more
13 employees.

14 33. Plaintiff did not have the authority to hire or fire other employees.

15 34. From September 2013 until July 2015 Plaintiff was paid a rate of
16 approximately \$14.50 per hour.

17 35. From August 2015 until November 30, 2015 Plaintiff was paid a rate of
18 approximately \$16.00 per hour.

19 36. In a given workweek of Plaintiff's employment with Defendants, Plaintiff
20 worked between approximately one (1) and twenty (20) hours of overtime without being
21 compensated at one-and-one-half times her regular rate of pay for such time worked.

22 37. Plaintiff worked more than forty (40) hours in a given workweek without
23 being compensated for the overtime hours worked during many workweeks.

24 38. For example, during the 2-week pay period ending on November 25, 2014,
25
26
27
28

1 Plaintiff worked at a minimum approximately 11 hours of overtime without being
2 compensated at one-and-one-half times her regular rate of pay for such time worked.

3
4 39. At all relevant time during Plaintiff's employment, Defendants failed to
5 properly compensate Plaintiff for her overtime hours.

6 40. Defendants were aware that Plaintiff's working hours routinely exceeded
7 40 hours, and required her to work overtime as a condition of her employment.

8 41. Defendants wrongfully withheld wages from Plaintiff by failing to pay all
9 wages due for hours Plaintiff worked.

10
11 42. Defendants failed to pay Plaintiff her complete final paycheck.

12 43. Defendants refused and/or failed to properly disclose or apprise Plaintiff of
13 her rights under the FLSA.

14
15 44. Defendants' willfully failed and/or refused to compensate Plaintiff at the
16 rates and amounts required by the FLSA and the Arizona Wage Statute.

17 **COUNT I**

18 **(FAILURE TO PAY OVERTIME WAGES – FLSA – 29 U.S.C. § 207)**

19 45. Plaintiff incorporates by reference all of the above allegations as though
20 fully set forth herein.

21 46. At all relevant times, Plaintiff was employed by Defendants within the
22 meaning of the FLSA.

23 47. Plaintiff was a non-exempt employee entitled to the statutorily mandated
24 overtime wage.

25 48. Defendants have intentionally failed and/or refused to pay Plaintiff
26 overtime according to the provisions of the FLSA.

27
28 49. As a direct result of Defendants' violations of the FLSA, Plaintiff has

1 suffered damages by not receiving compensation in accordance with 29 U.S.C. § 207.

2 50. Under 29 U.S.C. § 216 Defendants are liable to Plaintiff for an amount
3 equal to one and one-half times their regular pay rate for each hour of overtime worked
4 per week.

5
6 51. In addition to the amount of unpaid wages owed to Plaintiff, she is entitled
7 to recover an additional equal amount as liquidated damages pursuant to 29 U.S.C. §
8 216(b).

9
10 52. Defendants' actions in failing to compensate Plaintiff, in violation of the
11 FLSA, were willful. Defendants knew Plaintiff was working overtime but failed to pay
12 proper overtime wages. Defendants had no reason to believe their failure to pay overtime
13 was not a violation of the FLSA.

14
15 53. Defendants have not made a good faith effort to comply with the FLSA.

16 54. Plaintiff is also entitled to an award of attorneys' fees pursuant to 29 U.S.C.
17 § 216(b).

18
19 **COUNT II**
(FAILURE TO TIMELY PAY WAGES DUE – ARIZONA WAGE STATUTE)

20 55. Plaintiff incorporates by reference all of the above allegations as though
21 fully set forth herein.

22
23 56. At all relevant times, Plaintiff was employed by Defendants within the
24 meaning of the Arizona Wage Statute.

25 57. Defendants were aware of their obligation to pay timely wages pursuant to
26 A.R.S. § 23-351.

27
28 58. Defendants were aware that, under A.R.S. § 23-353, they were obligated to
pay all wages due to Plaintiff.

1 59. Defendants failed to timely pay Plaintiff her regular and overtime wages
2 due without a good faith basis for withholding the wages.

3 60. Defendants failed to timely pay Plaintiff her complete final paycheck.

4 61. Defendants have willfully failed and refused to timely pay regular and
5 overtime wages due to Plaintiff. As a result of Defendants' unlawful acts, Plaintiff is
6 entitled to the statutory remedies provided pursuant to A.R.S. § 23-355.
7

8 **CONCLUSION AND PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays:

10 A. For the Court to declare and find that the Defendants committed one or
11 more of the following acts:

12 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing to
13 pay overtime wages;

14 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;

15 iii. willfully violated the Arizona Wage Statute by failing to timely pay all
16 wages due to Plaintiff;
17

18 B. For the Court to award compensatory damages, including liquidated
19 damages pursuant to 29 U.S.C. § 216(b) and/or treble damages pursuant to
20 A.R.S. § 23-355, to be determined at trial;

21 C. For the Court to award interest on all wage compensation due accruing
22 from the date such amounts were due under all causes of action set forth
23 herein;

24 D. For the Court to award such other monetary, injunctive, equitable, and
25 declaratory relief as the Court deems just and proper;
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1 E. For the Court to award Plaintiff's reasonable attorneys' fees and costs
2 pursuant to 29 U.S.C. § 216(b) and A.R.S. § 12-341.01 and all other causes
3 of action set forth herein;
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5 F. Any other remedies or judgments deemed just and equitable by this Court.

6 **JURY DEMAND**

7 Plaintiff hereby demands a trial by jury of all issues so triable.
8

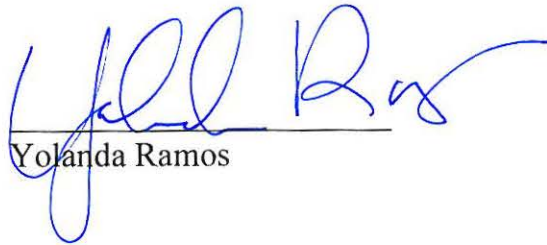
9 RESPECTFULLY SUBMITTED January 8, 2016.

10 **ZOLDAN LAW GROUP, PLLC**

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15 Attorneys for Plaintiff Yolanda Ramos
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VERIFICATION

Plaintiff Yolanda Ramos declares under penalty of perjury that she has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on her personal knowledge, except as to those matters stated upon information and belief, and as to those matters, she believes them to be true.



Yolanda Ramos